



**Federal Communications Commission  
Washington, D.C. 20554**

In Reply Refer To:  
1800B3-TSN

**DA 21-1561**  
Released: December 15, 2021

William Johnson, Managing Member  
Urban One Broadcasting Network, LLC  
414 SW 140<sup>th</sup> Terrace, Suite 120  
Newberry, FL 32669

**In re:** **DWURB(FM), Cross City, FL**  
Facility ID No. 189555  
File No. BNPH-20110524AHQ

**Petition for Declaratory Ruling**

Dear Mr. Johnson:

We have before us a Petition for Declaratory Ruling (Petition) filed by Urban One Broadcasting Network, LLC (Urban One), on June 17, 2021. In the Petition, Urban One (1) seeks to amend its December 13, 2016, "Petition for Reinstatement of Construction Permit," asking the Commission to reinstate Urban One's forfeited permit to construct an FM radio station at Cross City, Florida and to grant an 18-month construction period, and (2) asks for removal of the allotment for Channel 249C3 at Cross City, Florida, which previously covered Urban One's now-forfeited construction permit, from the Auction 109 inventory. We deny the Petition.

**Background.** This matter stems from Urban One's 2013 acquisition of an expiring construction permit for Channel 249 at Cross City, Florida with an expiration date of July 21, 2014.<sup>1</sup> On May 19, 2014, Urban One filed an application to modify the construction permit (Modification Application).<sup>2</sup> On June 16, 2014, Suncoast Radio, Inc. filed an Informal Objection to the Modification Application, arguing that it should be denied for failure to comply with the Commission's rules and section 106 of the National

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<sup>1</sup> Alex Media, Inc. (Alex Media) was the winning bidder for the construction permit (Station) in FM Auction 91. See *Auction of FM Broadcast Construction Permits Closes; Winning Bidders Announced for Auction 91*, Public Notice, 26 FCC Rcd 7541, Attachment A (MB/WTB 2011). We granted Alex Media's post-auction construction permit application on July 21, 2011, which was set to expire on July 21, 2014. Public Notice, Broadcast Actions, Report No. 47536 (July 26, 2011). On March 1, 2013, Urban One acquired the construction permit from Alex Media. File No. BAPH-20120917AGZ (Assignment Application) (assignment approved December 26, 2012, and consummated March 1, 2013). Urban One certified in the Assignment Application that it qualified as an eligible entity.

<sup>2</sup> The application proposed changing the Station's class, antenna location, effective radiated power, antenna height and tower height because of difficulties accessing the permitted site. File No. BMPH-20140519ABG.

Historic Preservation Act.<sup>3</sup> In reply, Urban One asserted that the antenna structure proposed in the Modification Application qualified for an exclusion from Section 106 Review on the basis that the proposed antenna structure would be “temporary.”<sup>4</sup>

On June 23, 2014, Urban One requested tolling of the permit’s construction deadline, claiming that the filing of the Informal Objection made the construction permit the subject of administrative review and thus entitled to tolling under section 73.3598(b)(2) of the Commission’s rules.<sup>5</sup> On June 25, 2014, Media Bureau (Bureau) staff rejected Urban One’s tolling request, explaining that difficulties at an alternative site cannot provide the basis for tolling and that an informal objection filed against a modification application does not render the original construction permit the subject of administrative review.<sup>6</sup>

In a letter decision dated July 17, 2014, the Bureau found that Urban One did not qualify for the exclusion from Section 106 Review for temporary structures. The Bureau granted Suncoast’s Informal Objection in part, and gave Urban One 30 days in which to amend its Modification Application.<sup>7</sup> However, the Bureau also specifically stated that “Construction Permit BNPH-20110524AHQ expires on July 21, 2014. This letter does not extend the expiration date of that construction permit or provide any additional time to construct.”<sup>8</sup>

Urban One filed two petitions for reconsideration: (1) a July 24, 2014, petition challenging the *Tolling Decision*,<sup>9</sup> and (2) an August 4, 2014, petition seeking reconsideration of the *Modification*

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<sup>3</sup> Informal Objection of Suncoast Radio, Inc., File No. BMPH-20140519ABG (filed June 16, 2014). Specifically, Suncoast Radio asserted that the Modification Application did not follow the procedure set out in 47 CFR § 1.1307(a)(4) and section 106 of the National Historic Preservation Act (Section 106 Review). *National Historic Preservation Act of 1966*, as amended, 16 U.S.C. § 470f; *Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act*, 47 CFR Pt. 1, App. C, § III.C (NPA); *Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process*, Report and Order, 20 FCC Rcd 1073, Appendix B, Section III.C (2004).

<sup>4</sup> Urban One claimed exemption from Section 106 Review based on its assertion that the 2004 National Programmatic Agreement contained an exclusion for “temporary” antenna structures, defined as those erected “for no more than twenty-four months duration,” and the antenna structure proposed in the Modification Application would have been standing for 24 months or less. Modification Application, Exhibit 35, “Permittee’s Documentation of Exclusions from Section 106 Review and FCC Form 620” (citing the NPA).

<sup>5</sup> 47 CFR § 73.3598(b)(2).

<sup>6</sup> See Email from Victoria McCauley to William Johnson (MB June 25, 2014) (*Tolling Decision*). On June 24, 2014, the Bureau notified Urban One by letter that the Modification Application could not be processed because the proposed facility failed the slope requirement (for an antenna structure near an airport) set out in 47 CFR § 17.7(b), and that therefore Urban One was required to notify the Federal Aviation Administration (FAA) of the proposed tower and obtain an FAA “no hazard” determination, and register the tower with the Commission. *Mr. William Johnson*, Letter, Ref. No. 1800B3-AED (MB June 24, 2014); see also 47 CFR § 17.4. On June 30, 2014, Urban One instead amended the Modification Application to reduce the proposed tower height to 14 meters, thus obviating the need to comply with notification and registration requirements.

<sup>7</sup> *Mr. William Johnson*, Letter, Ref. No. 1800B3-AED (July 17, 2014) (*Modification Decision*).

<sup>8</sup> *Id.* at 2.

<sup>9</sup> Petition for Reconsideration of the Denial of the Petitioner’s Request for Waiver of the Commission’s Construction Period Rule of Urban One Broadcasting Network, LLC, File No. BMPH-20140519ABG (filed July 24, 2014) (*Tolling PFR*).

*Decision*.<sup>10</sup> Urban One challenged the *Modification Decision* on both procedural and substantive grounds. Among other things, it argued that it would have been eligible for an extension of the Construction Permit deadline under the at-that-time defunct “eligible entity” policy,<sup>11</sup> which, *inter alia*, permits certain entities acquiring a construction permit additional time to construct, but which had been suspended in July 2011.<sup>12</sup> Urban One therefore requested that the “Commission act quickly to reestablish its ‘eligible entity’ policy by revising that policy” to state that the unbuilt construction permit assigned to an eligible entity (such as Urban One), upon Commission approval of the assignment or transfer, “shall be restored with the full 36 months allowed by the Commission for constructing a full power commercial or full power noncommercial radio station as provided under the Commissions current applicable construction period rules.”<sup>13</sup> The Bureau denied both of Urban One’s petitions by letter order dated March 3, 2015.<sup>14</sup> In the *Reconsideration Decision*, the Bureau also upheld the staff’s determination “that the Construction Permit automatically expired and was forfeit by its own terms and Section 73.3598(e) of the Rules on July 21, 2014.”<sup>15</sup>

Urban One timely filed an application for review of the Bureau’s denial of its petitions for reconsideration; the Commission denied the application for review by Memorandum Opinion and Order released April 5, 2016.<sup>16</sup> Urban One subsequently filed an April 29, 2016, petition for reconsideration of

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<sup>10</sup> Petition for Reconsideration of the Erroneous Granting in Part of the Respondent’s Informal Objection on the Basis that the Petitioner’s Pending Modification Application was Categorically (sic) Excluded from 47 C.F.R. Section 1.1306(a) Environmental (sic) Processing and Section 106 Review and on the Additional Basis of the Erroneous Adjudicating on the Merits of an Issue Raised by the FCC Staff’s Adjudicating Officer that was Outside the Scope of the Pleadings Raised of Urban One Broadcasting Network, LLC, File No. BMPH-20140519ABG (filed Aug. 4, 2014) (Modification PFR).

<sup>11</sup> *Id.* at 13.

<sup>12</sup> *Promoting Diversification of Ownership in the Broadcast Services*, Report and Order and Third Further Notice of Proposed Rulemaking, 23 FCC Rcd 5922 (2008). The policy was vacated on July 7, 2011, by the U.S. Court of Appeals for the Third Circuit. *Prometheus Radio Project v. FCC*, 652 F.3d 431, 465-71 (3d Cir. 2011) (*Prometheus*). Following the *Prometheus* decision, by Public Notice released July 25, 2011, the Media Bureau suspended the eligible entity policy. See *Media Bureau Provides Notice of Suspension of Eligible Entity Rule Changes and Guidance on the Assignment of Broadcast Station Construction Permits to Eligible Entities*, Public Notice, 26 FCC Rcd 10370 (MB 2011) (2011 Rule Suspension Public Notice). In 2016, the Commission revived the eligible entity policy. 2014 Quadrennial Regulatory Review - Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MB Docket Nos. 14-50, 09-182, 07-294, 04-256, Second Report and Order, 31 FCC Rcd 9864 (2016) (2014/2010 Quadrennial Second R&O). The reinstated eligible entity policy became effective on December 1, 2016. See 81 Fed. Reg. 76220-01 (Nov. 1, 2016) (2016 FR Public Notice). The eligible entity policy was subsequently vacated on September 23, 2019, *Prometheus Radio Project v. FCC*, 939 F.3d 567 (3d Cir. 2019), petition for rehearing *en banc* denied (3d Cir. Nov. 20, 2019). On December 20, 2019, the Media Bureau announced it had amended its rules to conform to the Third Circuit’s decision, including the court’s vacatur of the eligible entity policy. *Media Bureau Announces Procedures for Processing FCC Form 314 and 315 Assignment and Transfer of Control Applications for Commercial Stations in Light of Third Circuit Mandate*, Public Notice, 34 FCC Rcd 12374 (2019). On April 1, 2021, the U.S. Supreme Court, in *FCC v. Prometheus Radio Project*, reversed the September 23, 2019, decision of the United States Court of Appeals for the Third Circuit. *FCC v. Prometheus Radio Project*, 141 S.Ct. 1150, 209 L.Ed.2d 287 (2021) (*Prometheus Supreme Court Decision*).

<sup>13</sup> Modification PFR at 13.

<sup>14</sup> *William Johnson*, Letter Decision, 30 FCC Rcd 2015 (MB 2015) (*Reconsideration Decision*).

<sup>15</sup> *Id.* at 7.

<sup>16</sup> *Urban One Broadcasting Network, LLC*, Memorandum Opinion and Order, 31 FCC Rcd 4186 (2016) (*Urban One MO&O*).

the *Urban One MO&O*, which was dismissed by the Media Bureau on July 18, 2016.<sup>17</sup> Urban One then filed a Petition for Review with the United States Court of Appeals for the District of Columbia Circuit on August 15, 2016.<sup>18</sup>

On August 25, 2016, the Commission released the *2014/2010 Quadrennial Second R&O*,<sup>19</sup> which reinstated the eligible entity definition and the regulatory measures to which it applied,<sup>20</sup> including the policy allowing an eligible entity that acquires an expiring broadcast construction permit to obtain additional time to build out its facilities in certain circumstances.<sup>21</sup> On December 1, 2016, three and a half months after Urban One removed the matter from the Commission to the D.C. Circuit by its appeal, the reinstated eligible entity policy became effective.<sup>22</sup> Subsequently, on December 19, 2016, Urban One filed with the Commission a pleading styled “Petition for Reinstatement of Permittee’s Construction Permit Based on the Reinstatement of the FCC’s Eligible Entity Policy” (2016 Reinstatement Petition).

The court of appeals dismissed Urban One’s Petition for Review for lack of prosecution on August 11, 2017.<sup>23</sup> With Urban One’s appeals exhausted and the matter thus final, the Bureau as an administrative action in its Consolidated Data Base System (CDBS), deleted the call sign.<sup>24</sup>

On October 10, 2019, the Office of Economics and Analytics (OEA), in conjunction with the Bureau, announced that they would conduct Auction 106, which would offer FM construction permits at various locations, including one at Cross City, and sought comment on, among other things, the procedures for conducting an auction of those permits.<sup>25</sup> Three separate parties submitted comments

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<sup>17</sup> *Urban One Broadcasting Network, LLC*, Order on Reconsideration, 31 FCC Rcd 7680 (MB 2016) (*Reconsideration Dismissal*).

<sup>18</sup> On August 22, 2016, Urban One filed an “Amended Motion Requesting Stay of the Commission’s MO&O Decision Rendered in the Instant Matter on April 5, 2016” (Stay Motion). In the Stay Motion, Urban One made two requests: first, that the Commission stay the *Urban One MO&O* “pending the outcome of the United States Court of Appeals District of Columbia Circuit direct review of” the *Urban One MO&O*, and second that the *Urban One MO&O* be stayed pending Urban One’s request to the Commission that, in reinstating the eligible entity policy, it include “a special clause for permittees like Urban One that purchased their construction permit . . . without the benefit of being given an additional eighteen (18) month extension to construct their stations.” Stay Motion at 1-2. The Commission did not formally act on the Stay Motion; it became moot upon the court of appeals’s dismissal of Urban One’s appeal. Moreover, the record in this proceeding indicates that Urban One did not submit, in any form, its request for the “special clause” mentioned in the Stay Motion in any of the docketed proceedings referenced in the *2014/2010 Quadrennial Second R&O* or subsequent Order on Reconsideration (MB Dockets 17-289, 14-50, 09-182, 07-294, 04-256).

<sup>19</sup> See *supra* note 12.

<sup>20</sup> See *2014/2010 Quadrennial Second R&O*, 31 FCC Rcd at 9982, para. 285 and n.857.

<sup>21</sup> 47 CFR §73.3598(a).

<sup>22</sup> See 2016 FR Public Notice.

<sup>23</sup> *Urban One Broadcasting Network, LLC v. FCC*, Order, Document No. 1688385 (D.C. Cir. Aug. 11, 2017).

<sup>24</sup> See Consolidated Database System Legal Action Information for File No. BNPH-20110524AHQ, [http://licensing.fcc.gov/cgi-bin/ws.exe/prod/cdbs/pubacc/prod/leg\\_det.pl?Application\\_id=1428956&File\\_number=BNPH-20110524AHQ](http://licensing.fcc.gov/cgi-bin/ws.exe/prod/cdbs/pubacc/prod/leg_det.pl?Application_id=1428956&File_number=BNPH-20110524AHQ) (available in CDBS Public Access).

<sup>25</sup> *Auction of FM Broadcast Construction Permits Scheduled for April 28, 2020; Comment Sought on Competitive Bidding Procedures for Auction 106*, AU Docket No. 19-290, Public Notice, DA 19-1027, 34 FCC Rcd 9375 (OEA/MB 2019) (*Auction 106 Comment Public Notice*).

advocating for the inclusion or exclusion of certain permits for Auction 106, but Urban One did not file any comments or object to the inclusion of the Cross City permit at that time.<sup>26</sup> Auction 106 was postponed in early 2020 due to the COVID-19 pandemic, and in 2021 OEA and the Bureau cancelled Auction 106 and proposed to include all of those FM permits in a subsequent auction, Auction 109.<sup>27</sup> Again, while other parties filed comments seeking changes to the set of permits to be offered in Auction 109, Urban One did not comment on the inclusion of a construction permit for the allotment at Channel 249C3 at Cross City, Florida, in Auction 109.<sup>28</sup> Thus, OEA and the Bureau included that permit in the inventory for Auction 109. Over 150 parties filed an application to participate in the competitive bidding in Auction 109, but Urban One did not. One of those applicants submitted a winning bid for the new Cross City permit, and their construction permit application is currently being processed pursuant to the Commission's rules.<sup>29</sup>

**Discussion.** In the instant Petition, Urban One insists we must reinstate its construction permit and provide an additional 18 months in which to construct the Station, based on the recent reinstatement of the eligible entity policy following the *Prometheus Supreme Court Decision*.<sup>30</sup> Urban One also demands that we remove the vacant allotment, Channel 249C3 at Cross City, Florida, from the inventory of Auction 109. Because Urban One's construction permit was automatically forfeited on July 21, 2014<sup>31</sup> and the dismissal of its appeals of the related actions on the modification application and the tolling request became final in 2017, we take neither action.

Urban One first acquired the Station permit after filing an assignment application on September 17, 2012.<sup>32</sup> Although Urban One did certify in the Assignment Application that it qualified as an eligible

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<sup>26</sup> *Auction of FM Broadcast Construction Permits Scheduled for April 28, 2020; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 106*, AU Docket No. 19-290, Public Notice, 34 FCC Rcd 11993, 11996, para. 4 (OEA/MB 2019) (*Auction 106 Procedures Public Notice*).

<sup>27</sup> *Public Notice Auction of AM and FM Broadcast Construction Permits Scheduled for July 27, 2021; Comment Sought on Competitive Bidding Procedures for Auction 109*, AU Docket No. 21-39, Public Notice, 36 FCC Rcd 1409, 1410, para. 3 (OEA/MB 2021) (*Auction 109 Comment Public Notice*).

<sup>28</sup> *Auction of AM and FM Broadcast Construction Permits Scheduled for July 27, 2021; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 109*, AU Docket No. 21-39, Public Notice, 6 FCC Rcd 6424, 6428-27, paras. 9-10 (OEA/MB 2021) (*Auction 109 Procedures Public Notice*).

<sup>29</sup> *Auction of AM and FM Broadcast Construction Permits Closes; Winning Bidders Announced for Auction 109*, AU Docket No. 21-39, Public Notice, DA-21-983, Attachment A, 3 (OEA/MB Aug. 12, 2021).

<sup>30</sup> Petition at 2, 4. In June 2021, the Media Bureau announced that the eligible entity rules would be reinstated pursuant to the *Prometheus Supreme Court Decision*. *2014 Quadrennial Regulatory Review - Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MB Docket Nos. 14-50, 09-182, 07-294, 04-256, 17-289, Order, DA 21-656, at 1-2, para. 1 (MB June 4, 2021). Subsequently on July 1, 2021, the Media Bureau announced by public notice that the summary of the Order had been published in the *Federal Register* and that the reinstated rules became effective on June 30, 2021. *Media Bureau Announces June 30, 2021 Effective Date of Reinstated Media Ownership Rules*, Public Notice, DA 21-783 (MB July 1, 2021); *Media Bureau Reinstates Commission's Prior Rule Changes Regarding Media Ownership Consistent with the U.S. Supreme Court's Decision*, 86 Fed. Reg. 34627 (June 30, 2021).

<sup>31</sup> Section 319(b) of the Communications Act of 1934, as amended (Act) and section 73.3598(e) of the Rules provide that a station's construction permit forfeits automatically if the station is not ready for operation by the construction deadline. See 47 U.S.C. § 319(b); 47 CFR § 73.3598(e).

<sup>32</sup> Assignment Application, File No. BAPH-20120917AGZ. The Assignment Application was granted on December 26, 2012, and the transaction was consummated on March 1, 2013.

entity,<sup>33</sup> this did not change the fact that at the time the Assignment Application was filed, granted, and the transaction consummated, the eligible entity policy had been vacated and was not in effect.<sup>34</sup> Likewise, the eligible entity policy was not in effect on July 21, 2014, when the construction permit was forfeited as a matter of law—on that date the station was not ready for operation, nor had Urban One filed an application for license, and the staff had denied its modification application.<sup>35</sup> In short, the eligible entity policy was not in effect at any time between when Urban One obtained the Cross City construction permit and when that permit was forfeited. The eligible entity policy never applied to the Cross City permit at any time that it was held by Urban One.

The only justifications offered by Urban One for application of the eligible entity policy to its expired construction permit are its eligible entity status and the fact that it demonstrated that status in its assignment application for Cross City; that the Cross City construction permit was “still pending before the Commission on a stay of appeals of the action, taken against the permit,” when the eligible entity policy was reinstated in the *2014/2010 Quadrennial Second R&O*; and that reinstating the construction permit “would put Urban One on an even par with prior eligible entity applicants.”<sup>36</sup> Essentially, Urban One argues that it qualifies as an eligible entity, that other eligible entities were able to obtain extended construction periods when the eligible entity construction permit policy was in effect, and that therefore it is now entitled to the benefits of a revived eligible entity policy that was not in effect at any time starting with its acquisition of the Cross City construction permit and continuing through the time that permit was forfeited. Urban One is mistaken. First, the construction permit automatically forfeited upon expiration. The fact that Urban One continued, unsuccessfully, to prosecute its attempted modification and tolling of that forfeited construction permit does not mean that the permit itself remained “pending” when the eligible entity policy was reinstated. The remaining matters concerning the Station, namely the tolling request and modification application, had been decided by the Commission, adversely to Urban One, and reconsideration dismissed, all before the eligible entity policy was reinstated as of December 1, 2016.<sup>37</sup> The modification in particular, even if granted, would not have extended Urban One’s construction period.<sup>38</sup> Thus, contrary to Urban One’s assertions, there was no construction permit to “reinstate” when the Commission restored the eligible entity policy in 2016. Urban One’s 2016 Reinstatement Petition could not have been granted.

Finally, we reiterate that Urban One’s efforts to prosecute its application to modify the construction permit and its tolling request were, ultimately, unsuccessful and concluded several years ago.

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<sup>33</sup> See Assignment Application, Section III, Question 6(d), and Attachment 20.

<sup>34</sup> See *2011 Rule Suspension Public Notice*.

<sup>35</sup> See 47 U.S.C. § 319(b) (construction permit “shall be automatically forfeited if the station is not ready for operation within the time specified or within such further time as the Commission may allow, unless prevented by causes not under the control of the grantee.”); 47 CFR § 73.3598(e) (“Any construction permit for which construction has not been completed and for which an application for license has not been filed, shall be automatically forfeited upon expiration without any further affirmative cancellation by the Commission.”). Urban One attempted to claim, in the Reconsideration Petition, that repeal of the eligible entity policy “was the result of court action, and not due to any cause relating to Urban One’s Form 314 assignment application.” Reconsideration Petition at 2. This does not, however, constitute a “cause not under the control of the grantee,” given that, as discussed in the text, the policy was not in effect at any time during Urban One’s tenure as the Cross City permittee.

<sup>36</sup> 2016 Reinstatement Petition at 2-4.

<sup>37</sup> See *2014/2010 Quadrennial Second R&O*, 81 Fed. Reg. 76220-01 (Nov. 1, 2016).

<sup>38</sup> Similarly, the tolling request, if granted, would at most have given Urban One the remaining 35 days of its construction period in which to complete the Station once tolling was lifted. The informal objection was filed June 16, 2014, 35 days before the Cross City permit expired.

The 2021 *Prometheus Supreme Court Decision*, which forms the basis for Urban One’s most recent request for declaratory relief, did not change the fact that all matters surrounding the Station were final in 2017, long before the Supreme Court reinstated the eligible entity policy in 2021.<sup>39</sup> A subsequent rule change cannot resurrect a matter that is final and, as in this case, has been final for almost four years.<sup>40</sup> Moreover, Urban One offers no Commission precedent for applying the eligible entity policy retroactively over seven years after the Cross City construction permit was forfeited upon expiration as a matter of law.<sup>41</sup>

In short, then, there remains no construction permit for us to reinstate, as it was forfeited by its own terms on July 21, 2014.<sup>42</sup> The call sign WURB was deleted, and the unbuilt Cross City FM channel assignment was deleted and designated as a vacant allotment in the Table of Allotments, from which it was subsequently added to the Auction 109 inventory.

**Ordering Clause.** Accordingly, the Petition for Declaratory Ruling filed by Urban One on June 17, 2021, IS DENIED.

Sincerely,

Albert Shuldiner  
Chief, Audio Division  
Media Bureau

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<sup>39</sup> *Prometheus Supreme Court Decision*, 141 S.Ct. at 1160 n.4.

<sup>40</sup> See, e.g., *Meredith Colon Johnston (WECP), Carthage, Mississippi*, Memorandum Opinion and Order, 41 F.C.C.2d 512, 514 para. 8 (1973) (*Johnston*) (declining to apply new rule to long-standing comparative proceeding when rule became effective some seven weeks after release of final decision, and no outstanding public interest considerations were advanced that would warrant such an “extreme retroactive application”).

<sup>41</sup> See *id.* As to Urban One’s invocation of minority status (Petition at 6), the Commission has adopted race-neutral licensing measures to address the legal requirements of the Supreme Court’s decision in *Adarand*. See e.g., *Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, Tenth Report and Order, 11 FCC Rcd 19974, 19975-77, paras. 1-3 (1996), citing *Adarand Constructors v. Peña*, 515 U.S. 200, 229-30 (1995) (strict scrutiny standard applied to any government program involving a racial preference).

<sup>42</sup> See 47 U.S.C. § 319(b); 47 CFR § 73.3598(e). See also *Reconsideration Decision* at 7.